

**SUBJECT:** Barring mandatory polygraph exams of sexual assault victims

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 8 ayes — Place, Hartnett, Allen, Combs, De La Garza, Greenberg, Nieto, Solis

0 nays

3 absent — Granoff, Stiles, Talton

**SENATE VOTE:** On final passage, April 14 — voice vote

**WITNESSES:** For — Lacey Sloan, Texas Association Against Sexual Assault (TAASA); Hannah Riddering, Texas National Organization for Women. (Registered only — Shelia Enid Cheaney, American Civil Liberties Union of Texas; G.K. Sprinkle and Grant Hartline, TAASA; Shannon Noble, Texas Women's Political Caucus; Rhonda Cates, Texas Council on Family Violence)

Against — None

On — Rob Kepple, Texas District and County Attorneys Association

**DIGEST:** SB 482 would amend the Code of Criminal Procedure to prohibit police officers or prosecutors from requiring that victims of certain sexual offenses take a polygraph examination in order to file a complaint.

The bill would apply to complaints involving indecency with a child, sexual assault, aggravated sexual assault, and incest.

Under the bill, a complaint of sexual assault could not be dismissed solely (1) because the complainant did not take a polygraph examination or (2) on the basis of the polygraph results.

Police and prosecutors could request that victims undergo an examination, but would have to advise them that the exam was not required and that a complaint could not be dismissed because they refused the test or on the basis

of their test results. In addition, police and prosecutors could not take examinations of sexual assault victims without supplying the required information and securing the victims' signatures indicating that they understood the information.

The bill would take effect September 1, 1993.

**SUPPORTERS  
SAY:**

SB 482 would ensure that victims of violent sexual crimes are not treated worse than criminals by upholding their rights to a fair hearing of their complaints. The law stipulates that a complaint is sufficient if it meets four simple requisites: provides the name of the accused or a description; shows that the accused has committed some offense or provides good reason to believe so; states the time and place of the offense; and is signed by the complainant. Incredibly, however, many victims of sexual assault are forced to take polygraph tests to "substantiate" their complaints before a charge is even investigated. This is exactly what happened to one young woman who was kidnapped, raped, and brutally beaten. This type of insensitive demand only perpetuates the myth that victims of these assaults are somehow at fault for the offense.

Furthermore, polygraph exams produce unreliable results, particularly in trauma cases, such as sexual assaults. The physical reactions to trauma — shock, poor memory, depression, confusion, anger, tension, fatigue, and guilt — are very likely to skew polygraph results. The sense of distrust and disbelief that victims feel when ordered to submit to a polygraph test also hampers recovery from the assault, and may even depress the victim to the extent that she declines to press charges, thereby letting a sex offender go free to offend again.

SB 482 balances the rights of victims with the needs of police to suggest using a polygraph test when it would help in an investigation. The information that would have to be given to the victim would clear up any confusion as to the nature of the request.

**OPPONENTS  
SAY:**

Rather than generally prohibit use of the polygraph as a tool by law enforcement and prosecutors for evaluating the veracity of persons who allege that they are victims of sexual assault, guidelines could be established for its use to avoid traumatizing victims.

OTHER  
OPPONENTS  
SAY:

The bill is on the right track but would not go far enough. Polygraph tests are inadmissible in court as evidence; they should be disallowed in any form or fashion in taking a complaint from a victim of sexual assault. These victims are in a vulnerable position, and may perceive a "request" from an officer as an order. Already victims of sexual assault must submit to embarrassing and even humiliating medical exams to collect evidence of semen, for example, to substantiate assaults. Adding to their emotional and mental discomfort by suggesting that their claims somehow do not ring true is cruel punishment.

NOTES:

The 71st Legislature approved a similar bill, HB 1701 by Hinojosa, but then-Gov. Clements vetoed the bill because of a Senate amendment that would have prohibited correctional employees from being disciplined or fired for refusing to take polygraph tests. Since then, two similar bills authored by Zaffirini have passed the Senate but died in the House.